IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

ST.Rev..No. 172 of 2007()

TA.190/2006 OF THE KERALA SALES TAX APPELLATE TRIBUNAL, THIRUVANANTHAPURAM

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PETITIONER/APPELLANT :

M/S.TVS AND SONS LTD,THIRUVANANTHAPURAM.

BY ADV. SRI.A.KUMAR

RESPONDENT/RESPONDENT:

STATE OF KERALA REPRESENTED BY
SECRETARY,MINISTRY OF FINANCE,
THIRUVANANTHAPURAM.

BY SPL.GOVT. PLEADER (TAXES) MR.V.V.ASOKAN

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION ON 06/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

S.T.Rev.No.172 of 2007

Dated, this the 6th day of June, 2007

ORDER

H.L.Dattu, C.J.

Petitioner is a company incorporated under the Companies Act, It is also registered under the provisions of the Kerala General Sales Tax Act and the Central Sales Tax Act. It is engaged in the sale of automobiles and spare parts. In this revision filed under Section 41 of the KGST Act, the assessee calls in question the correctness or otherwise of the orders passed by the Kerala Sales Tax Appellate Tribunal in T.A.No.190 of 2006 dated 30th December, 2006.

2. In the revision so filed, the assessee has framed the following questions of law:

> "a) whether or not the Hon'ble Tribunal and the authorities below had gone wrong in their understanding and applying of the judgment of the Supreme Court in Mohd. Ekram Khan and Sons. V. Commissioner of Trade Tax (136 STC 515)?
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> b) When the Hon'ble Tribunal after having examined the facts of the petitioners case, considered and found factually (as per para 6) that the replacements are free, within the warranty period and in consonance of the terms of the dealership agreement of the petitioners with the manufacturer and further having specifically concluded that the same is as per the terms of vehicle warranty extended by the manufacturers to the vehicle owners, has not the Tribunal erred in not returning a finding that the petitioners were only discharging the obligation of the manufacturer insofar as warranty were concerned and thereby eschewing a sale?
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> c) When in the facts and circumstances of the case, where the dealer has only discharged the obligation for and on behalf of the manufacturer in terms of the dealership agreement and as evidently practiced the reimbursement of cost of the spares is only receipt of compensation by the dealer, there being no contract for sale of parts used by the dealer to discharge the warranty obligation of the manufacturer, has not

the Hon'ble Tribunal and the authorities erred in holding that there is a 'sale'?

d) Whether or not the Hon'ble Tribunal and the authorities below were right in holding that there is a 'sale' without understanding the true nature, substance and effect of the transaction under the dealership agreement which reveals that no consideration has passed at all towards a sale and there is no situation of a 'sale' whatsoever taxable under the KGST Act?

3. The issue raised in this revision, in our opinion, is no more res integra in view of the authoritative pronouncement made by the Supreme Court in **Mohd. Ekram Khan & Sons**. v. **Commissioner of Trade Tax** (136 STC 515).

4. The Tribunal, while rejecting the contentions canvassed by the assessee has relied upon the law laid down by the apex Court. In view of the above, in our opinion, the Tribunal has not committed any error whatsoever which would call for our interference. Accordingly, the questions of law framed by the assessee requires to be answered in the negative and in favour of the revenue. Ordered accordingly.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

vns